

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte RICHARD O. SHULER, LYNN GODBERSEN, JAMES NORWOOD,
JOSEPH YOUNG, WILLIAM FLECK, DAVID LIND, KEVIN DEHAAN,
THOMAS NICHOLSON, and MARCELL J. SARZEN

Application 09/909,587
Technology Center 3600



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This Image File Wrapper (IFW) application was electronically received at the Board of Patent Appeals and Interferences on December 4, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

The Examiner has failed to list prior art relied upon in the rejections currently on appeal under the heading “**(8) Evidence Relied Upon**” in the Examiner’s Answer mailed March 7, 2007. The Examiner states that he “has provided the Downes reference, with a definition of ‘commodities futures contracts’”. *See the Manual of Patent Examining Procedure (MPEP) § 1207.02(A)(8).*

Before further review, the Examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of all references mentioned and provide a copy of any NPL/Foreign reference which is not presently of record. *See MPEP § 1207.02.* Appropriate correction is required.

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Further review reveals that the Appellants have made reference to an Internet website (which is technically considered evidence that was not properly submitted under the “Evidence Appendix” for the Examiner to consider) in the Appeal Brief received by the Office on November 14, 2006. (*See* Appeal Brief at 26)(http://www.webopedia.com/TERM/d/data_mining.html). It is unclear in the Examiner’s Answer if this new evidence submitted by the Appellants has been entered and considered. Clarification by the Examiner for the written record is required. *See* 37 C.F.R. §§ 41.33 and 41.37.

Accordingly, it is *ORDERED* that the application is returned to the Examiner:

- (1) to issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, paragraph (8);
- (2) to clarify the status of the Evidence submitted by Appellants after Appeal in the Appeal Brief; and
- (3) for such further action as may be appropriate.

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